

REMARKS

Claims 20-38 were pending in the present application. By virtue of this response, claims 26, 30 and 35 have been cancelled, and claim 20 has been amended without prejudice or disclaimer of any previously claimed subject matter. Accordingly, claims 20-25, 27-29, 31-34, and 36-38 are currently under consideration. Amendment and cancellation of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented. Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is entitled "**VERSION WITH MARKINGS TO SHOW CHANGES MADE.**"

Rejections under 35 U.S.C. §102(e) and § 103(a)

The Office has rejected claims 20, 21, and 30 as allegedly being anticipated by Stein, et al. (U.S. Patent No. 6,264,959). The Office has also rejected claims 22-25 and 31-34 as allegedly being obvious over Stein, et al.

The Examiner has indicated that claims 26-29 and 35-38 are allowable. The Examiner has stated that the prior art of record does not disclose or fairly suggest the compositions of claims 26-29 and 35-38. Claim 20 has been amended to include the limitations of claim 26, to promote prosecution. Claim 20 also has also been amended to delete the recitation of "are hollow and". It is submitted that Stein et al. does not identical disclose or fairly suggest the claims as amended herein.

Applicants request withdrawal of these rejections.

Rejection under 35 U.S.C. §112 and objection under 37 C.F.R. 1.75(c)

The Office has rejected claim 30 as allegedly being indefinite for failing to point out and distinctly claim the subject matter which the applicant regards as the invention.

Claim 30 has been cancelled, to promote prosecution, thereby rendering this rejection moot. Withdrawal of the rejection is respectfully requested.

Allowable Claims

The Office has objected to claims 26-29 and 35-38 as being dependent upon a rejected base claim, but the Office has indicated that the claims would be allowable if rewritten in independent form including all of the limitation of the base claim and any intervening claims.

Claim 20 has been amended to include the limitations of claim 6, and to delete the recitation of "are hollow and". It is submitted that each of the claims as amended herein are allowable, and a Notice of Allowance is respectfully requested.

CONCLUSION

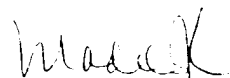
Applicant has, by way of the amendments and remarks presented herein, made a sincere effort to overcome rejections and address all issues that were raised in the outstanding Office Action. Accordingly, reconsideration and allowance of the pending claims are respectfully requested. If it is determined that a telephone conversation would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 263742002801.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Claims 26, 30 and 35 have been cancelled.

Claim 20 has been amended as follows:

20. (Twice Amended) A therapeutic or diagnostic composition for administration via the pulmonary airways comprising substantially dry, discrete microcapsules having a solid wall formed of a non-denatured, water-soluble wall-forming material, wherein the wall-forming material is an amino or polyamino acid, and wherein said microcapsules [are hollow and] have a mean size of between 1 and 10 μm , and a therapeutically effective amount of a therapeutic or diagnostic agent;

wherein the wall forming material optionally is the therapeutic or diagnostic agent.